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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,763	01/27/2000	Eiko Masatsuji	Q54487	1343

7590 08/27/2002

Sughrue Mion Zinn MacPeak & Seas PLLC
2100 Pennsylvania Ave N W
Washington, DC 20037-3213

EXAMINER

KIM, VICKIE Y

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 08/27/2002 *16*

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/492,763

Applicant(s)

MASATSUJI ET AL.

Examiner

Vickie Kim

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-6 and 9.Claim(s) withdrawn from consideration: 16-20.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
10. ☒ Other: See Continuation Sheet

William R. A. Jarvis
PRIMARY EXAMINER

ART UNIT 1614



Continuation of 10. Other: Applicant is advised that newly proposed amendment has not been entered because of the following reasons: the claims 2-6 fail to further limit the subject matter of previous claims which the said claims are depending on. Applicant argued in the reponse filed 08/14/02, that the said claims further limit the therapeutic amount of the previous claims by reciting their specific uses. However this examiner likes to point out that newly proposed claims do not read as what applicant argues about. They are still read on very same composition of the previous claim which each claim is depending on. The limitations found in these dependent claims are recited for the use of a dermal agent of previous claim, for example, claim 2 read on a composition of claim 1 having activity as an antibacterial. Thus the features which applicant argues, are not included in the newly proposed claims. Even if the amendment is drafted to include the said features (in the future), the amendment may not be entered because it requires additional search due to the scope changes. The 132 declaration is not been considered to be valid because it lacks clear support for the superiority which applicant is claiming. Even though applicant files 3 references to support the method of the irritation tests, it is irrelevant to the factual support for the experiments 2-7 because no data or study comparison to prove the unexpected result (or superiority), for example, applicant made his statement (i.e. ...By this experiment, the antibacterial activity of was verified to be greatly high as compared with other ascorbic acid...., see experiment 2, last paragraph) to acknowledge the unexpected result of his invention, but not with factual support. Again, this examiner did not question about the study itself, but the result that should have been supported by factual support such as comparison data, etc. Thus the claims are properly maintained in the rejection previously issued because of the reasons of the record.